IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.292 OF 2005

Dr. Sunil Jilajit Mishra .... Petitioner

Vs.

State of Maharashtra & Ors. .... Respondents

Shri Omprakash Pandey i/b M/s. Pandey & Co. for the Petitioner.

Shri D.S. Mhaispurkar, A.P.P., for the State.

CORAM: R.M.S. KHANDEPARKAR &

P.V. KAKADE, JJ.

DATED: APRIL 28, 2005

P.C:

1. Heard. The petitioner seeks direction to the police for recording of his complaint regarding the alleged coercion suffered by him for signing two cheques at the hands of one Ram Vilas Jaiswal on 3-5-2004. Undisputedly, the intimation in that regard was given to the police who preferred to record the same as a non-cognizable complaint and directed the petitioner to

pursue the remedy before the learned Magistrate. It is also an undisputed fact that while lodging the complaint regarding the alleged coercion for signing the cheques, apart from bare allegations in that regard, no material in support of those allegations was either disclosed or placed before the police authorities. In those circumstances, no fault can be found with the police directing the petitioner to approach the learned Magistrate while recording the complaint of the petitioner as a non-cognizable complaint. The alternative efficacious remedy in the form of a private complaint being available to the petitioner, there is also no justification for interference in the matter in writ jurisdiction. The petition on that count itself is liable to be dismissed.

2. However, since one disturbing factor came to our notice in the course of hearing of this matter as well as some other matters pertaining to the reluctance on the part of the police authorities to give the copy of the complaint lodged with them and registered by them as a non-cognizable case. It is revealed that the police on recording a complaint as a non-cognizable offence merely informs the complainant about the registration number of the complaint without disclosing the details of the complaint recorded by them in their book. In that regard, therefore, notice was issued to the

respondents and Shri P.P. Shrivastav, Principal Secretary (Special), Government of Maharashtra, Home Department, Mantralaya filed an affidavit stating that there is no provision for providing any copy of a non-cognizable complaint to the complainant and there is likelihood of burdening of the staff if such a provision is to be made. However, at the same time, the Principal Secretary on behalf of the Government has stated in the affidavit dated 20-4-2005 that:-

> "... considering the totality of the circumstances i.e. the informant giving non cognizable complaint may not be aware as to what exactly is written down while recording his N.C. complaint and he is required to apply for certified copy of the same by paying necessary charges, the Government in principle has agreed for giving the copy of the complaint registered on the basis of information given by informant in non-cognizable cases, free of cost."

By further affidavit filed today, the said Principal Secretary has further informed the Court that:-

> "... the present N.C. Register will be

> required to be changed and the new Registers will have to be prepared and get printed from the Government Printing Press and thereafter the same will be provided to all the Police Stations through Director General of Police. This process will require minimum 6 months time."

3. The contention on behalf of the respondent/authority that the provision for providing copy of the N.C. complaint would result in burdening the staff is totally devoid of substance. Merely because for providing a copy of the N.C. complaint, it may require increase in members of the staff, that cannot be a justification to deny the copy of the N.C. complaint to the informant. In fact, it is apparent that even the Government being aware of the same, has decided, as disclosed in the affidavit of the Principal Secretary, that it has agreed in principle for giving the copy of the complaint to the informant in non-cognizable cases, free of costs.

4. It is true that in terms of Section 154 of the Code of Criminal Procedure, in case of a cognizable complaint a copy thereof is necessary to be given to the informant free of costs and there is no such provision in Section 155 of the Code of Criminal Procedure which relates to

the recording of non-cognizable cases. However, as rightly stated on behalf of the respondent/authority itself that in case of failure on the part of the respondent/authority to furnish copy of such complaint, the complainant would not be in a position to know as to what is recorded in the N.C. register. That apart, when the informant approaches the Magistrate, for the purpose of knowing exactly what was informed by the informant to the police immediately after the incident and first in point of time, such an information will be of great assistance to the Magistrate while deciding the point regarding the issuance of process against the accused on the basis of the materials to be placed by the informant before the Magistrate. Being so, merely because there is no specific provision in Section 155 of the Code of Criminal Procedure to provide copy of the N.C. complaint to the informant, that would not be a justification for the Government to refuse the copy of such complaint to the informant. In fact, to enable the Magistrate to adjudicate the complaint in proper perspective, the availability of such a copy with the informant would be of great assistance to the Magistrate when the informant approaches the Magistrate. In any case, the respondent/authority having itself decided to supply, free of costs, the copy of the N.C. complaint to the informant, no further adjudication on this point is required. We accept the statement of the Principal

Secretary made on behalf of the Government that the Government has decided to give such copy of the N.C. complaint to the informant free of costs and that necessary arrangement will be made as early as possible and in any case within a period of six months from today. While recording the acceptance of the said statement, and expecting the Principal Secretary to file in this Court the compliance report in respect of the said statement on behalf of the Government in December, 2005, as no further interference is required in relation to the grievance of the petitioner, the petition is hereby disposed of.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)